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OFFICE OF PETITIONS

In re Application of: :
David M. Tucker et al. :
Application No. 10/716,248 :
Filed: November 17, 2003 :
Attorney Docket No. 205-0034USRI :

PETITION DECISION

This is a decision on the renewed petition, filed December 21, 2010, which is being treated as a petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.64.

The petition is **Granted**.

An originally named inventor, David Tucker, who signed the originally filed declaration, is allegedly refusing to sign a supplemental reissue declaration. Petitions under 37 CFR 1.47(a) apply to situations where a joint inventor refuses to join in an application or cannot be found or reached. However, petitions under 37 CFR 1.47(a) are only applicable to the initial execution of an original oath or declaration and are not applicable to supplemental oaths or declarations by the originally signing inventor. In such circumstances, the USPTO will consider a petition under 37 CFR 1.183 requesting waiver or the requirements of 37 CFR 1.64 that each of the actual inventors execute the supplemental oath or declaration.

MPEP 603 states in part:

When an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, the requirement for that inventor to sign the supplemental declaration may be suspended or waived in accordance with 37 CFR 1.183. All available joint inventor(s) must sign the supplemental declaration on behalf of themselves, if appropriate, and on behalf of the nonsigning inventor. See MPEP § 409.03(a).

In discussing waiver requirements under 37 CFR 1.183, the Office is guided by proof similar to that required when an applicant is unavailable or refuses to sign. Petitioner indicates that the non-signing inventor Iwamura cannot be located to sign the replacement declaration.

MPEP 409.03(d) (II) states in part:


Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient.

The renewed petition provides evidence that the non-signing inventor, David Tucker, through his attorney, Wayne Clawwater, cannot be located or refuses to sign the supplemental reissue declaration.

The application is forwarded to Technology Center Art Unit 2856.

Telephone inquiries concerning this matter should be directed to Carl Friedman at (571) 272-6842.



David Bucci
Petitions Examiner
Office of Petitions